

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:) Order No. 94-03
)
Guerrero Negro Drums) ADMINISTRATIVE ORDER
) PURSUANT TO SECTION 106
Respondents:) OF THE COMPREHENSIVE
) ENVIRONMENTAL RESPONSE,
A&W Smelters and Refiners) COMPENSATION, AND
John A. Alexander) LIABILITY ACT OF 1980
Daryl Westerfeld) as amended, 42 U.S.C.
William Snavelly) Section 9606(a)
)

I. PREAMBLE

1.1 This Administrative Order ("Order") is issued on this date to the Respondents, pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"), delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, further delegated to the EPA Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and further redelegated to the Director, Hazardous Waste Management Division by Region IX Delegations 1290.41 and 1290.42.

1.2 The State of California has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

1.3 This Order requires the Respondents to remove, on or about December 9, 1993, approximately 173 drums of hazardous substances ("the drums") from temporary storage at the Appropriate Technology II ("App Tech") facility located in Chula Vista, California, to abate an imminent and substantial endangerment to human health or welfare or the environment. The drums were exported by the Respondents to the United States of Mexico ("Mexico") during September and October, 1992. On December 8, 1993, the drums will be repatriated by Mexico to the United States as illegally exported hazardous waste under Annex III of

1 the 1983 U.S.-Mexico Agreement of Cooperation for the Protection
2 and Improvement of the Environment in the Border Area ("Annex
3 III"), also known as the La Paz Agreement and transferred for
4 temporary storage to the App Tech facility. The La Paz agreement
5 authorizes the United States and Mexico to enter into
6 arrangements to solve common environmental problems. Annex III
7 creates arrangements for addressing hazardous waste.
8

9 II. FINDINGS OF FACT

10
11 Based on available information, including the Administrative
12 Record in this matter, U.S. EPA hereby finds:
13

14 Location of Drums

15
16 2.1 On or about December 8, 1993, the drums will be in temporary
17 storage at the App Tech facility located on 1700 Maxwell Road,
18 Chula Vista, California 91911.
19

20 Respondents

21
22 2.2 The Respondents for this site are:
23

24 A&W Smelters and Refiners
25 12040 E. Florence Ave.
26 Santa Fe Springs, CA 90670
27 PH# (310) 944-6215
28 Fax# (301) 944-7198
29

30 John A. Alexander
31 12040 E. Florence Ave.
32 Santa Fe Springs, CA 90670
33 PH# (310) 944-6215
34 Fax# (310) 944-7198
35

36 Daryl Westerfeld (President)
37 2601 Aland Avenue
38 Lancaster, CA 93534
39 PH# (805) 943-6076
40 PH# (805) 824-2656
41 Fax#(805) 944-7198
42

43 William Snavely
44 43723 Sentry Lane
45 Lancaster, CA 93536
46 PH# (805) 948-8897
47

1
2 Incident / Release Characteristics
3

4 2.3 On May 19, 1993, Mexico advised US EPA that it intended to
5 repatriate the drums from Mexico to the United States under
6 Annex III. The drums were located near Guerrero Negro, Baja
7 California, Mexico.
8

9 2.4 An investigation by EPA and its representatives revealed
10 that these drums and their contents originated at the A&W Smelter
11 and Refiners facility outside of Mohave, California and were
12 illegally exported into Mexico.
13

14 2.5 A&W is a potentially responsible party at two sites in the
15 United States involving waste from their Mohave facility. It is
16 believed that the material in Guerrero Negro is similar to the
17 waste at these other sites.
18

19 2.6 The drums are in very poor condition. Several drums are so
20 highly corroded that failure is imminent. As a result, they
21 present a risk of release of their contents to the environment.
22 Upon repatriation the drums will present a risk of release of
23 their contents to the environment of the United States. They
24 will continue to pose such a risk until they are properly
25 disposed of. Under the authorities of the Comprehensive
26 Environmental Response, Compensation and Liability Act
27 ("CERCLA"), 42 U.S. § 9601 et seq., and the National Contingency
28 Plan ("NCP"), 40 C.F.R. Part 300, these facts constitute an
29 actual or threatened release of a hazardous substance, pollutant
30 or contaminant. A response to this actual or threatened release
31 is therefore eligible for the exercise of funding and enforcement
32 options available to EPA under CERCLA.
33

34 2.7 In view of the condition of the drums, and the potentially
35 hazardous nature of the waste, and the responsibility to readmit
36 the material into the United States, U.S. action with regard to
37 the drums could be considered a prudent measure to prevent a
38 likely release.
39

40 Quantities and Types of Substance Present
41

42 2.8 The drums contain both liquids and solids. Preliminary
43 analyses of some drum contents indicate that the materials
44 exhibit the characteristics of hazardous waste for corrosivity
45 (pH) and toxicity (lead > 5.0 mg/L). A more complete assessment
46 of the drums will be conducted by EPA after the drums are
47 repatriated.
48

1
2 2.9 The County of San Diego, the FBI and U.S. Customs officials
3 conducted a preliminary assessment ("PA") on June 24, 1993, in
4 support of a U.S. criminal investigation. The PA concluded that
5 the materials at the site were of U.S. origin.
6

7 Threats to Public Health and Welfare

8

9 2.10 Lead and lead compounds are defined as hazardous substances
10 pursuant to the Comprehensive Environmental Response,
11 Compensation, and Liability Act of 1980, as amended (CERCLA), 40
12 CFR Section 302.4. The material exhibited the characteristic of
13 Toxicity through the Total Concentrate Leachate Procedure (TCLP)
14 analysis of greater than 5.0 milligrams per liter (> 5.0 mg/l)
15 pursuant to CFR 261.24 for lead (D008). At these concentrations,
16 lead is universally considered a risk to human health, especially
17 children.
18

19 2.11 Should these drums be abandoned and their contents
20 released, soil contamination would occur. Soil Clean-up Action
21 Levels are commonly in the 500-600 ppm range. The elevated lead
22 concentrations found in the contents of these drums pose a
23 significant health hazard to the local population.
24

25 2.12 The United States Department of Health and Human Services,
26 Public Health Service, National Institute for Occupational Safety
27 and Health classifies lead as a potential human carcinogen. The
28 ingestion of lead by humans is known to cause damage to the
29 kidneys and central nervous system and cause anemia. High levels
30 of lead within the blood stream of children can also cause severe
31 learning disabilities and health disorders.
32

33 Threats to the Environment

34

35 2.13 The abandonment of these drums and any subsequent release
36 of their hazardous contents makes exposure to wildlife and the
37 environment likely. Weather-spread lead contamination can
38 potentially contaminate the local ecosystem and aquifers.
39

40 III. CONCLUSIONS OF LAW

41

42 Based on the foregoing Findings, U.S. EPA has concluded that:
43

44 3.1 A&W Smelters and Refiners is a "person" as defined by
45 Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
46

47 3.2 John A. Alexander is a "person" as defined by Section
48 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
49
50

1 3.3 Daryl Westerfeld is a "person" as defined by Section 101(21)
2 of CERCLA, 42 U.S.C. Section 9601(21).
3

4 3.4 William Snavely is a "person" as defined by Section 101(21)
5 of CERCLA, 42 U.S.C. Section 9601(21).
6

7 3.5 A&W is a person who by contract, agreement, or otherwise
8 arranged for disposal or treatment, or arranged with a
9 transporter for transport for disposal or treatment, of hazardous
10 substances owned or possessed by such person, by any other party
11 or entity, at any facility or incineration vessel owned or
12 operated by an other party or entity and containing such
13 hazardous substances.
14

15 3.6 John A. Alexander is a person who by contract, agreement, or
16 otherwise arranged for disposal or treatment, or arranged with a
17 transporter for transport for disposal or treatment, of hazardous
18 substances owned or possessed by such person, by any other party
19 or entity, at any facility or incineration vessel owned or
20 operated by an other party or entity and containing such
21 hazardous substances.
22

23 3.7 Daryl Westerfeld is a person who by contract, agreement, or
24 otherwise arranged for disposal or treatment, or arranged with a
25 transporter for transport for disposal or treatment, of hazardous
26 substances owned or possessed by such person, by any other party
27 or entity, at any facility or incineration vessel owned or
28 operated by an other party or entity and containing such
29 hazardous substances.
30

31 3.8 William Snavely is a person who by contract, agreement, or
32 otherwise arranged for disposal or treatment, or arranged with a
33 transporter for transport for disposal or treatment, of hazardous
34 substances owned or possessed by such person, by any other party
35 or entity, at any facility or incineration vessel owned or
36 operated by an other party or entity and containing such
37 hazardous substances.
38

39 3.9 The Respondents are therefore liable persons under Section
40 107(a) of CERCLA, 42 U.S.C. Section 9607.
41

42 3.10 Lead is a "hazardous substance" as defined by Section
43 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
44

45 3.11 Hazardous wastes that exhibit characteristics of hazardous
46 waste for corrosivity and toxicity are hazardous substances under
47 CERCLA Section 101(14).
48

49 3.12 The contents of the drums are hazardous substances as
50 defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

1 3.13 The abandonment of the approximately 173 drums in question
2 constitutes an actual or threatened "release" as that term is
3 defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).
4

5 IV. DETERMINATIONS

6
7 Based on the Findings of Fact and Conclusions of Law, the
8 Director, Hazardous Waste Management Division, EPA Region IX, has
9 made the following determinations:

10
11 4.1 The actual or threatened release of hazardous substances
12 from the drums may present an imminent and substantial
13 endangerment to the public health or welfare or the environment.
14

15 4.2 The actions required by this Order, if properly performed,
16 are consistent with the National Contingency Plan ("NCP"), 40 CFR
17 Part 300 and CERCLA; and are appropriate to protect the public
18 health or welfare or the environment.
19

20 4.3 The material constitutes a threat to public health or
21 welfare or the environment based upon consideration of the
22 factors set forth in the NCP at 40 CFR section 300.415(b). These
23 factors include, but are not limited to, the following:
24

25 *a. actual or potential exposure to hazardous substances*
26 *by nearby populations, animals, or food chain;*
27

28 The abandonment of the drums may lead to a release of lead,
29 a hazardous substance that may adversely impact the local
30 community.
31

32 *b. hazardous substances in drums, barrels, tanks, or other*
33 *bulk storage containers, that may pose a threat of release;*
34

35 This factor is present due to the abandonment of
36 approximately 173 drums and their deteriorated condition.
37

38 *c. weather conditions that may cause hazardous substances*
39 *to migrate or be released;*
40

41 In the event of a release, due to abandonment, wind and rain
42 may cause additional migration of lead.
43

44 V. ORDER

45
46 Based upon the foregoing Findings, Conclusions of Law, and
47 Determinations, and pursuant to Section 106(a) of CERCLA, 42
48 U.S.C. Section 9606(a), it is hereby Ordered that the
49 Respondent(s) undertakes the following actions under the
50 direction of EPA's On-Scene Coordinator:

1
2 5.1 By 5:00 p.m., **Thursday, December 9, 1993**, the Respondent
3 shall contact Bill Lewis through the EPA's 24 Hour Emergency
4 Phone Line at (415) 744-2000. The Respondent(s) shall request to
5 speak to the EPA Duty Officer who will put Respondent(s) in touch
6 with Mr. Lewis. The Respondent(s) shall then notify EPA of their
7 intentions to assume responsibility for the storage of the
8 approximately 173 drums staged at Appropriate Technologies II,
9 Chula Vista, California. The Respondent(s) shall assume all
10 financial responsibilities for the storage of the drums
11 commencing on **Thursday, December 9, 1993**.
12

13 5.2 Within thirty (30) days upon receipt of this Order, the
14 Respondent(s) shall arrange for and conduct the transportation
15 and disposal of the approximately 173 drums staged at Appropriate
16 Technologies II, Chula Vista, California. The Respondent(s)
17 shall utilize Department of Transportation and State of
18 California approved hazardous waste transporters. Disposal shall
19 be arranged with an EPA-approved and permitted facility that is
20 in compliance with EPA Off-Site Policy (OSWER Directive 9834.11,
21 November 13, 1987) in accordance with CERCLA Section 121(d)(3),
22 42 U.S.C. §9621(d)(3). EPA must provide the Respondent(s)
23 written approval and acceptance to the Respondents prior to any
24 transportation or disposal of the drums.
25

26 5.3 All work must be in compliance with EPA's Standard Operating
27 Safety Guide, dated November, 1984, and updated July, 1988, and
28 with the Occupational Safety and Health Administration ("OSHA")
29 regulations applicable to Hazardous Waste Operations and
30 Emergency Response, 29 CFR Part 120.
31

32 5.4 All work shall be performed by qualified contractor to
33 undertake and complete the requirements of this Order. The
34 Respondent(s) shall notify EPA of the name of such contractor
35 within two (2) days of the effective date of this Order. EPA
36 retains the right to disapprove of any, or all, of the
37 contractors and/or subcontractors retained by the Respondent(s).
38 In the event EPA disapproves of a selected contractor, the
39 Respondent(s) shall retain a different contractor to perform the
40 work, and such selection shall be made within two (2) business
41 days following EPA's disapproval.
42

43 5.5 The Respondent(s) shall provide EPA with written weekly
44 summary reports. These reports should contain a summary of the
45 previous week's activities and planned upcoming events. The
46 weekly reports shall also contain any hazardous waste manifests
47 generated during site activities.
48

49 5.6 EPA shall be informed at least forty-eight (48) hours prior
50 to any on-Site work.

1 5.7 All sampling and analysis shall be consistent with the
2 "Quality Assurance/Quality Control Guidance for Removal
3 Activities": "Sampling QA/QC Plan and Data Validation
4 Procedures," EPA OSWER Directive 9360.4-01, dated April, 1990.
5

6 5.8 On or before the effective date of this Order, the
7 Respondent(s) shall designate a Project Coordinator. To the
8 greatest extent possible, the Project Coordinator shall be
9 present on Site or readily available during Site work. The U.S.
10 EPA has designated Bill Lewis, as its On-Scene Coordinator. The
11 On-Scene Coordinator and the Project Coordinator shall be
12 responsible for overseeing the implementation of this Order. To
13 the maximum extent possible, communication between the
14 Respondent(s) and EPA, and all documents, reports, and approvals,
15 and all other correspondence concerning the activities relevant
16 to this Order, shall be directed through the On-Scene Coordinator
17 and the Project Coordinator.
18

19 5.9 The EPA and the Respondent(s) shall each have the right to
20 change their respective designated On-Scene Coordinator or
21 Project Coordinator. EPA shall notify the Respondent(s), and
22 Respondent(s) shall notify EPA, as early as possible before such
23 a change is made, but in no case less than 24 hours before such a
24 change. Notification may initially be verbal, but shall promptly
25 be reduced to writing.
26

27 5.10 The EPA On-Scene Coordinator shall have the authority
28 vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300, as
29 amended, including the authority to halt, conduct, or direct any
30 work required by this Order, or to direct any other response
31 action undertaken by U.S. EPA or the Respondent(s) at the
32 facility.
33

34 5.11 No extensions to the above time frames shall be granted
35 without sufficient cause. All extensions must be requested, in
36 writing, and shall not be deemed accepted unless approved, in
37 writing, by U.S. EPA.
38

39 5.12 All instructions by the EPA On-Scene Coordinator or his
40 designated alternate shall be binding upon the Respondent(s) as
41 long as those instructions are not clearly inconsistent with the
42 National Contingency Plan.
43

44 5.13 To the extent that the Facility or other areas where work
45 under this Order is to be performed is owned by, or in possession
46 of, someone other than the Respondent(s), the Respondent(s) shall
47 obtain all necessary access agreements. In the event that after
48 using their best efforts Respondent(s) is unable to obtain such
49 agreements, Respondent(s) shall immediately notify EPA.
50

1 5.14 Nothing contained herein shall be construed to prevent EPA
2 from seeking legal or equitable relief to enforce the terms of
3 this Order, or from taking other legal or equitable action as it
4 deems appropriate and necessary, or from requiring the
5 Respondent(s) in the future to perform additional activities
6 pursuant to CERCLA, 42 U.S.C. Section 9601, et seq., or any other
7 applicable law.
8

9 5.15 The provisions of this Order and the directions of the
10 On-Scene Coordinator shall be binding on the employees, agents,
11 successors, and assigns of the Respondent(s).
12

13 5.16 Except where this Order specifically provides otherwise,
14 its obligations shall be effective one (1) calendar day following
15 issuance unless a conference is requested as provided herein. If
16 a conference is requested, this Order shall be effective one (1)
17 calendar day following the day of the conference unless modified
18 in writing by U.S. EPA.
19

20 5.17 Within twenty-four (24) hours of receipt of this Order, the
21 Respondent(s) shall provide notice, verbally or in writing, to
22 U.S. EPA stating their intention to comply with the terms of this
23 Order. Verbal notification must be followed in writing within
24 three (3) calendar days. In the event the Respondent(s) fails to
25 provide such notice, the Respondent(s) shall be deemed not to
26 have complied with the terms of this Order.
27

28 5.18 The Respondent(s) shall retain copies of all records and
29 files relating to hazardous substances found on the site for six
30 years following completion of the activities required by this
31 Order and shall make them available to the EPA prior to the
32 termination of the removal activities under this Order.
33

34 5.19 The Respondent(s) shall submit a final report summarizing
35 the actions taken to comply with this Order. The report shall
36 contain, at a minimum: identification of the facility, a
37 description of the locations and types of hazardous substances
38 encountered at the facility upon the initiation of work performed
39 under this Order, a chronology and description of the actions
40 performed (including both the organization and implementation of
41 response activities), a listing of the resources committed to
42 perform the work under this Order (including financial,
43 personnel, mechanical, and technological resources),
44 identification of all items that affected the actions performed
45 under the Order and discussion of how all problems were resolved,
46 a listing of quantities and types of materials removed from the
47 facility, a discussion of removal and disposal options considered
48 for any such materials, a listing of the ultimate destination of
49 those materials, and a presentation of the analytical results of
50 all sampling and analyses performed and accompanying appendices

1 containing all relevant paperwork accrued during the action
2 (e.g., manifests, invoices, bills, contracts, permits). The
3 final report shall also include an affidavit from a person who
4 supervised or directed the preparation of that report. The
5 affidavit shall certify under penalty of law that based on
6 personal knowledge and appropriate inquiries of all other persons
7 involved in preparation of the report, the information submitted
8 is true, accurate, and complete to the best of the affiant's
9 knowledge and belief. The report shall be submitted within 30
10 days of completion of the work required by the U.S. EPA.

11
12 5.20 All notices, reports, and requests for extensions submitted
13 under terms of this Order shall be sent by certified mail, return
14 receipt requested, and addressed to the following:

15
16
17 one copy Bill Lewis
18 On Scene Coordinator
19 U.S. EPA
20 75 Hawthorne Street
21 San Francisco, CA 94105
22 (415) 744-2292

23
24 one copy Terry Brubaker, Section Chief
25 Emergency Response Section
26 U.S. EPA
27 75 Hawthorne Street
28 San Francisco, CA 94105
29 (415) 744-2293

30
31 one copy John Rothman
32 Assistant Regional Counsel
33 U.S. EPA (RC-5) Office of Regional Counsel
34 75 Hawthorne Street
35 San Francisco, CA 94105
36 (415) 744-1353

37
38 5.21 If any provision of this Order is deemed invalid or
39 unenforceable, the balance of this Order shall remain in full
40 force and effect.
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VI. ACCESS TO ADMINISTRATIVE RECORD

6.1 The Administrative Record supporting the selection of the response action for this site will be available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. in the EPA's Superfund Record Center, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, 9th Floor, San Francisco, California. Please contact Steven Calanog, Enforcement Case Officer, at (415) 744-2296 to review the Administrative Record.

VII. OPPORTUNITY TO CONFER

7.1 With respect to the actions required above, the Respondent(s) may within twenty-four (24) hours after issuance of this Order, request a conference with the EPA. Any such conference shall be held within three (3) calendar days from the date of request unless extended by mutual agreement of the parties. At any conference held pursuant to the request, the Respondent(s) may appear in person, or be represented by an attorney or other representative. If the Respondent(s) desires such a conference, the Respondent(s) shall contact John Rothman, Assistant Regional Counsel, at (415) 744-1353.

7.2 If such a conference is held, the Respondent(s) may present any evidence, arguments or comment regarding this Order, its applicability, any factual determinations upon which the actions Order is based, the appropriateness of any action which the Respondent(s) is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within 10 calendar days following the conference. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) calendar days following the issuance of this Order. Any such writing should be directed to John Rothman, Assistant Regional Counsel, at the address cited above.

7.3 The Respondent(s) is hereby placed on notice that EPA will take any action which may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and Respondent(s) may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those government actions.

VIII. PENALTIES FOR NONCOMPLIANCE

8.1 The Respondent(s) is advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject the Respondent(s) to a civil penalty of up to \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject the Respondent(s) to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of the Respondent(s) to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

THIS ORDER IS ISSUED ON THIS 8th DAY OF DECEMBER, 1993.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: 

Jeff Zelikson, Director
Hazardous Waste Management Division
United States Environmental Protection Agency

Attachment

Guidance Documents by Reference

- 1) Guidance Document: Superfund Removal Procedures #3, OSWER #9360.0-038, 02/01/88 (HQ# 1006).
- 2) Guidance Document: Removal Cost Management Manual (Secondary Reference), OSWER #9360.0-028, 04/01/88 (HQ# 6001).
- 3) Guidance Document: Land Disposal Restrictions, 08/11/87 (HQ# 2204).
- 4) Guidance Document: Emergency Response Cleanup Services Contracts (ERCS), Users' Manual, 10/01/82 (RC# 9006).
- 5) Guidance Document: National Oil & Hazardous Substances Pollution Contingency Guidance, Part 300, 40 CFR CH. 1 (3-8-90 Edition), pp. 664-755, 03/08/90 (RC# 9038).
- 6) Guidance Document: Superfund Amendments & Reauthorization Act of 1986 (SARA), 10/17/86 (RC# 90100).
- 7) Guidance Document: Interim Guidance on Administrative Records for Selection of CERCLA Response Actions, OSWER 9833.3A, 03/01/89 (RC# 9013).
- 8) Guidance Document: Superfund LDR Guide #7: Determining When Land Disposal Restrictions (LDR's) are "Relevant and Appropriate" to CERCLA Response Actions, OSWER 93347.3-08FS, 12/01/89 (HQ# 2220).1.